



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 15, 1993

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR93-159

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 18389.

The City of Garland ("the city") received an open records request for "documentation relating to budgeting and payments of outside counsel for the City of Garland in calendar year 1992." You indicate that the city maintains copies of three items of information which are responsive to the request for payment records: attorney fee bills, payment authorization forms and checks. You say that in 1992, the city made over 50 payments to outside counsel and that these payments involve four law firms. You say you have asked the requestor to clarify his request for "budget documents" of the city to outside law firms during 1992 and informed him where he may obtain a copy of the city's annual budget.

You released payment authorization forms and copies of checks reflecting all payments made by the city in 1992 to outside law firms which handled litigation that has concluded. You withheld all information about payment to law firms which are handling pending litigation pursuant to section 3(a)(3) of the Open Records Act, and all attorney's fee bills pursuant to section 3(a)(1) of the Open Records Act,

You contend that you may withhold all attorney bills in their entirety, citing section 3(a)(1) of the Open Records Act in conjunction with the attorney-client privilege and Open Records Decision No. 304 (1982). The attorney-client privilege is more specifically covered in the Open Records Act under section 3(a)(7). Open Records Decision No. 574 (1990) at 2. With regard to attorney fee bills, the privilege applies only to information on the bill that reveals client confidences or the attorney's legal advice. Open Records Decision Nos. 589 (1991) at 1; 574 (1990) at 7 (overruling Open Records Decision No.

304). Factual notations, such as documentation of a meeting, of the drafting or filing of a motion or judgment, or of discussions or phone calls with third parties, are not protected under section 3(a)(7). *Id.*

We have reviewed the four representative samples of fee bills you enclosed. For the most part, the bills contain the kind of factual notations which are not protected from required public disclosure under section 3(a)(7). However, we are unable to determine whether several marked portions document the content of a communication with a client or a third party. If those portions document communication with a client, you may withhold them under section 3(a)(7).

Section 3(a)(3) of the Open Records Act excepts from required public disclosure information that relates to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990). You inform us that the city, the city manager, and mayor are defendants in *Quintana v. City of Garland, et al.*, Cause No. 4:92-CV-199 in the United States District Court for the Eastern District of Texas. You say that discovery has begun in this litigation and have enclosed copies of two depositions. In one deposition, the mayor was asked how much money the city paid in outside counsel fees in defending the *Quintana* lawsuit. The mayor invoked the attorney-client privilege. In the other deposition, the city manager was asked several questions about the fee arrangement between the city and its outside counsel in regard to the *Quintana* lawsuit.

Because plaintiff's counsel sought the amount the city paid in outside counsel fees during discovery in the *Quintana* lawsuit, information about such amounts relates to that pending litigation. Thus, based on section 3(a)(3) of the Open Records Act, you may withhold the amounts paid which appear on the copies of the attorney fee bills, the payment authorization forms and checks pertaining to outside counsel fees the city paid in the *Quintana* litigation. However, once the opposing party in *Quintana* obtains this information, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information, and you must disclose it. *See* Open Records Decision Nos. 349, 320 (1982).¹

As for the amount of attorney fees the city has paid to outside counsel in litigation other than the *Quintana* litigation, you have not explained that those fees are an issue in *Quintana* or in any other pending litigation. Thus, you have not made the requisite showing that the amounts paid to outside counsel in other litigation relates to pending litigation. Consequently, you may not withhold under section 3(a)(3) the fee amounts that appear on the copies of the checks, payment authorization forms or billing statements pertaining to litigation other than the *Quintana* litigation.

¹We agree that the application of section 3(a)(3) does not depend on whether the requestor is the opposing party to the litigation.

In summary, you must release all of the information on the fee bills, except the amounts of the bills from the law firms of Riddle and Brown, and Middleberg, Riddle & Gianna (the firms handling the *Quintana* litigation), and those marked portions of the bills which constitute client confidences. You must also release all information on all payment authorization forms and copies of checks to outside counsel, except for the amounts billed for the *Quintana* litigation.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-159.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/TCC/le

Enclosures: Open Records Decision Nos. 574, 589
Documents Submitted

Ref: ID# 18389

cc: Mr. Fredye Long Thornburg
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